

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1431 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRAHLADSINH BALDEVSINH JADEJA

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH, Advocate for the Petitioner.

MR.U.R.BHATT,AGP,for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/07/96

ORAL JUDGEMENT

Petitioner Prahaladsinh Baldevsinh Jadeja ( hereinafter referred to as "the detenu" ), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 10-1-1996 passed by the Commissioner of Police, Rajkot City, (

hereinafter referred to as "the detaining authority" ) under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ( hereinafter referred to as " the PASA Act" ).

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three criminal cases for offences punishable under the Indian Penal Code and the Bombay Police act and the statements of three witnesses who have given details about the anti-social activities of beating innocent citizens and extorting monies at the point of knife. Considering the above materials , the detaining authority was of the view that the detenu is a "dangerous person " within the meaning of section 2 (c) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is capable of being disposed of on the first contention advanced by Ms Kachhava, it is not necessary to deal with the other contentions raised in the petition. Mrs. Kachhava submitted that the detaining authority has not supplied a copy of the bail application with respect to C.R.No.202/95 and, therefore, the detenu has been denied his right guaranteed under Article 22 (5) of the Constitution of making an effective representation against his detention and, therefore, the continued detention of the detenu is vitiated. In support of her submission, reliance is placed by her on the decision of the Supreme Court in M Ahamedkutty vs Union of India and another (1990 ) 2 SCC 1.

The Supreme Court in the said decision has laid down that the detenu is entitled to get copy of the bail application and the bail order with respect to the offence relied on by the detaining authority and non-supply thereof by the detaining authority would amount to violation of the constitutional right guaranteed under Article 22 (5) of the Constitution and consequently, therefore, it would vitiate the order of detention itself. Applying the said principle to the present case, it is not in dispute that the detaining authority has not supplied the copy of the bail application with respect to the offence of C.R.No.202/95 and, therefore, the detenu has been denied his right of making an effective representation against his detention guaranteed under Article 22 (5) of the Constitution of

India. Therefore, the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 10-1-1996 is quashed and set aside. The detenu Prahaladsinh Baldevsinh Jadeja is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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